recovery is sought. See *Osborne* v. *McMasters*, 40 Minn. 103, 41 N. W. 503; *Marino* v. *Lehmaier*, 173 N. Y. 530, 66 N. E. 572. For a general discussion of the subject, see Thayer, "Public Wrong and Private Action," 27 HARV. L. REV. 317.

WILLS — CONSTRUCTION — GENERAL REVOCATORY CLAUSE. — The testatrix duly executed a will consisting of items numbered from one to nine, disposing of all her property. An executor was also appointed. A later paper, titled "Item Ten," began with a general revocatory clause, and merely provided for the care of her estate by an attorney until the arrival of her executor. There was also a statement of her desire to dispose of all her property. *Held*, the express revocatory clause does not revoke the first will. *Owens* v. *Fahnestock*, 96 S. E. 557 (S. C.).

In the construction of wills, the intention of the testator should govern. *Finlay* v. *King's Lessee*, 3 Pet. (U. S.) 346; *Patch* v. *White*, 117 U. S. 210, 6 Sup. Ct. Rep. 617. See *Lemage* v. *Goodban*, L. R. 1 P. & M. 57, 62. Nevertheless, the expressed intention is controlling irrespective of the internal state of the testator's mind. *Jackson* v. *Sill*, 11 Johns. (N. Y.) 201. See *Simpson* v. *Foxon*, 1907 P. 54, 57. This intention must be gathered from all the parts of the will taken together, whether the will consists of several papers executed as one instrument or of separately executed documents. See *Rogers* v. *Rogers*, 49 N. J. Eq. 98, 23 Atl. 125; *Lemage* v. *Goodban*, *supra*. See also PAGE, WILLS, §§ 462, 470. The words, "This is my last will and testament," are very slight evidence of an intention to revoke prior testamentary dispositions. *Stoddard* v. *Grant*, 1 Macqueen's Rep. 163; *Cutto* v. *Gilbert*, 9 Moore P. C. 131; *Gordon* v. *Whitlock*, 92 Va. 723, 24 S. E. 342. See *Aldrich* v. *Aldrich*, 215 Mass. 164, 169, 102 N. E. 487, 490. Even the words, "last and only will," have been held not to be an express revocation. *Simpson* v. *Foxon*, 1907 P. 54. But a general revocatory clause is very much stronger, and *prima facie* revokes prior testamentary papers. *Southern* v. *Dening*, 20 Ch. D. 99; *In re Kingdon*, 32 Ch. D. 604. See *Cadell* v. *Wilcocks*, [1898] P. 21, 26. If it is clear, however, from all the testamentary papers, that the testator had no intention to revoke, the revocatory clause will be treated as mere surplusage. *Denny* v. *Barton*, 2 Phillim. 575; *Van Wert* v. *Benedict*, 1 Bradf. (N. Y.) 114. See *Dempsey* v. *Lawson*, 2 P. D. 98, 105–107; *Smith* v. *McChesney*, 15 N. J. Eq. 359, 363. The principal case is more clearly right, because it can be ascertained from the alleged revocatory instrument itself that there is no intention to revoke. "Item Ten" indicates a continuation of a will of nine items. The testatrix desires to dispose of all her property, yet this paper makes no such provision. Moreover, she speaks of an appointed executor who must necessarily administer under a will disposing of some property.

BOOK REVIEWS

LEMUEL SHAW, CHIEF JUSTICE OF MASSACHUSETTS, 1830–1860. By Frederic Hathaway Chase. Boston and New York. Houghton Mifflin Company. 1918. pp. 329.

Fifty-eight years ago, Chief Justice Lemuel Shaw resigned his great office. Fifty-seven years ago he died. Few men now living remember his face; and probably no lawyer survives who ever argued before him. His judicial record stretches through fifty-six volumes and his name is almost daily on our lips. But until Judge Chase printed his interesting volume, no biography of him had appeared.

Born January 9, 1781, in what is now called Barnstable, his father, Reverend Oakes Shaw, fitted him for Harvard, from which he graduated in 1800. He taught school during winter vacations and wrote for, and became an Assistant Editor of, the *Boston Gazette*. In 1801, he was entered as a student of law in the office of David Everett in Boston, and, after the three years of study, without which no student could become a member of the bar, he was admitted in 1804 in the Court of Common Pleas. Two years of practice were then required before being allowed to act as an attorney before the Supreme Judicial Court, and two years' additional experience as an attorney was necessary to become a counsellor who could try cases in the highest court. He opened an office at first in Amherst, N. H., for two years. Then he returned to Massachusetts and started as a lawyer in Plymouth, but in December, 1806, he removed to Boston and shared the office of Thomas O. Selfridge, shortly before Selfridge's famous quarrel with Charles Austin, which resulted in Austin's death.

In 1818, being then thirty-seven years old, he married Elizabeth Knapp; but she died in 1822, leaving him a son and a daughter. In 1827, he married Miss Hope Savage of Barnstable, and in 1831 he established his home at No. 49 Mt. Vernon Street, Boston. There he lived during the rest of his life. His son, Samuel, who never was married, continued there and kept his father's home quite unchanged, until he himself died in 1915.

Lemuel Shaw devoted himself closely to his profession until 1830. His practice was the ordinary experience of a young attorney, and became extensive. He was the active manager in the impeachment, in 1821, of Probate Judge Prescott, who was finally convicted and removed from his office. While he sat in the Massachusetts House of Representatives and also in the Senate for brief periods, he never inclined to political life. His practice at the bar was largely in commercial law, but he never became prominent as an advocate. He was the author of the Boston City Charter and a member of the Constitutional Convention of 1820. The original draft of the Boston Charter in his own handwriting is still preserved in the State archives. This charter, which was an enduring piece of constructive legislation, continued in force as originally fashioned until 1913, when the present charter of the city was adopted. It is a noteworthy standard among the forms of Community-Government, and probably was the most important piece of professional work which Shaw accomplished while at the bar. His office, at last, became very popular and desirable as a place for students. In 1820, when Sidney Bartlett graduated at Harvard, he became a student in Shaw's office, and very soon became Shaw's partner. It is believed that this ten years of close connection with Mr. Bartlett contributed much to Shaw's financial success. Shaw never tried many cases before juries. It is also true that Mr. Bartlett, leader of the bar as he was for so many years, and continuing actively in the courts until he was over ninety years of age, never acquired the reputation of a great advocate; but still, the learned author of Shaw's biography, Judge Chase, of the Superior Court, is not quite accurate in supposing that Mr. Bartlett seldom tried many cases at *nisi prius*. He certainly was frequently before juries in his earlier years; and, as late as 1879, in the case of *Clark* v. *Wilson* (103 Mass. 509), Mr. Bartlett led in its trial to the jury before Chief Justice Brigham in the Superior Court. He was senior counsel throughout the trial, although he insisted that his junior should make both the opening and the closing arguments to the jury. But this was undoubtedly the last jury trial in which Mr. Bartlett ever took part.

Lemuel Shaw was, through his entire life, devoted to the law, and had no taste for politics or legislation. He refused to run for Congress, and, although he was asked to accept the office of Judge of Probate in 1819, he did not comply with the request. During his later professional life, Shaw was certainly employed in many large cases. He was consulted frequently by the City of Bos-

ton. He often argued before legislative committees. He was counsel for many corporations who procured toll franchises during the time when bridges and roads often received them. He drew the bill of complaint in the famous case of *Charles River Bridge* v. *Warren Bridge* (6 Pick. 76; 7 Pick. 144; 11 Peters, 420); but Webster argued the case at Washington. This was the last great litigation in which Lemuel Shaw's name appears as counsel. Although his practice became lucrative, his professional fees did not approximate the present inflated standard. Shaw's retainers were not often over ten or twenty dollars. His charge for an argument before the full bench of the Supreme Judicial Court seems usually to have been one hundred dollars. Nevertheless, he accumulated a competence during his twenty-six years of practice as a lawyer. Daniel Webster is authority for the statement that Shaw's professional income in his last years at the bar yielded him annually from fifteen to twenty thousand dollars. Indeed, it seems altogether probable, that, when he went on the bench, his net property, at his own valuation, was not far from $100,000 in net value. It must be remembered, however, that this sum was considered ample wealth in those days. His salary as Chief Justice never exceeded $3,500, and he hardly could have accumulated much during his long life on the bench. When he became Chief Justice, the Massachusetts Reports covered only twenty-six volumes — a number not too large to be carefully read and digested. Indeed, Caleb Cushing did exactly that thing when he was made judge. That great lawyer himself told the writer that, as soon as he had received his own appointment, he went into retirement in order to read, and actually did digest carefully, every case in every volume of the then existing Massachusetts Reports. This proceeding explains his extraordinary acceptance as a presiding judge among the leaders of the bar at that time; and his short term of service was much deplored.

Lemuel Shaw received his commission as Chief Justice on August 30, 1830, taking his seat at the September term at Lenox in Berkshire County. Governor Lincoln, who appointed him, had resigned from the same bench to become governor. He knew the quality of the man he appointed and broke the precedent of promoting the senior associate justice, and took Shaw directly from the bar, because he had personal knowledge of Shaw's peculiar fitness. After thirty years as Chief Justice Shaw disclosed, in June, 1860, to his colleagues his intention of resigning, and on the 21st of August, 1860, he resigned. Seven months later, on March 30, 1861, he breathed his last.

To analyze his decisions is impossible at this time. They run through fifty-six volumes. They cover the thirty years of history which preceded the Civil War, — a period of most rapid development, not only in national life, but in the great changes in the modes and inventions of actual living, and substantially the entire development of the world's commerce by steamship on the ocean. When the Revolutionary War ended in 1783, nearly all American vessels had their home-port in the single harbor of Salem and Beverly. Consequently during the next half-century, Salem almost monopolized East-Indian, Asiatic and Pacific commerce in American bottoms. During the Revolution, every other important Atlantic port had been in the hands of the British. Beginning with the siege of Boston, the British held successively for about eight years New York, Portland, Philadelphia, Baltimore, Charleston and Savannah as merely British ports. Almost every New England ship had been swept from the seas, excepting only the two or three hundred privateers whose home-port was Salem. Wooden vessels at that time were built so as to be seaworthy, and to last and to sail the seas for not less than fifty years. The owners of these privateers, which hailed from Salem, had suddenly to convert their swift-sailing clippers into peaceful work. But New England ingenuity was equal to the emergency. The great merchant-families of that day very naturally started in Salem. Maritime interests and insurers settled their legal

questions and difficulties in Massachusetts courts. It was not, until about the time when Shaw ceased to be Chief Justice, that either Boston or New York had succeeded in outstripping the old town of Salem in the competition for African, Asiatic and Pacific commerce. Moreover, commerce was in wooden vessels chiefly. Iron steam-vessels did not largely replace wooden vessels and packet lines and navigation by sails, until near the time of Shaw's resignation, and consequently made over the rules of admiralty and maritime commerce which had come down from the days of Columbus and the rules of Oléron. During the thirty years of Shaw's chief justiceship, steamships began to rule the ocean, and steam-engines and railroads began to take the place on land of the stagecoach and the baggage wagon. The entire body of railroad law grew up during the time when Shaw was Chief Justice. Street railways had not even been invented in 1830. Life insurance also had only begun in this country. The oldest life insurance company in this country, — the New England Mutual Life Insurance Company, — occupied, in 1860, only a single floor over a store on State Street. It needed no more room to accommodate its President, Secretary and all its clerks. Emigrants came to America only in packet-line wooden vessels. Sleeping cars had not even been invented. No Pullman ever entered Boston until the Jubilee, after the Civil War, in 1865. Passenger travel between Washington and New York, in 1856, involved nine changes. Travelers had to make use of ferryboats, omnibuses and cars drawn by horses, as well as steam-engines, to pass between those cities prior to, and indeed mostly during, the Civil War. When gold was discovered in California in 1848, prospective miners from New England had two choices. They had either to go in sailing vessels round Cape Horn, or they could travel in caravans with horses from the Mississippi River over the Rocky Mountains. Fifty prospective gold seekers in New England would, at that time, often unite in buying as joint owners a vessel in Boston in order to sail round Cape Horn; and then work it around Cape Horn as sailors themselves, and finally sell the vessel when they reached San Francisco. It is simply true that the history of the country is best disclosed in the subject matter litigated in the reported cases. These new business devices created new rules of law, and new applications of old rules. The decisions made while Shaw was on the bench, for this reason, possess peculiar and unusual interest from the extraordinary and varied character of the litigated issues.

Moreover, in Shaw's time courts did not try, as much as they do now, to decide every case by ruling only on one single point which could settle the single case at bar. For instance, when the statute for fish investigation came before the court, the Chief Justice discussed nearly every one of its provisions. He construed practically the whole statute in its different clauses. The result was that that single opinion anticipated and prevented future disputes under the statute; and the statute never came before the court again for construction.

To discuss Chief Justice Shaw's decisions, however, is quite beyond the scope of this article, and cannot be attempted. Besides their wide scope, and their novelty, and the habits of the court, bitter political fights were impending, and cast their shadows over the court. Controversies which brought on the Civil War raised great legal questions and resulted in decisions of too large moment to be here taken up. Judge Chase's book is well worth careful study for its discussion of them alone.

Chief Justice Shaw's personality was not much more than a tradition before Judge Chase wrote his book. One little incident which shows how the Chief Justice not only declared the law, but obeyed it himself, is worth preserving. The writer's home in childhood was close to Judge Shaw's home on Mt. Vernon Street and naturally his person was familiar to all the children. One day a little playmate ran out of Belknap (now Joy) Street and was about to cross Mt. Vernon Street in front of the chaise of the Chief Justice, as he was driving

home. Half way across the street, the child noticed the horse and turned to scamper back to the sidewalk. But Judge Shaw at once pulled up his horse and, beckoning to the boy to keep on, said: "Cross over, little boy, it is your right." This trifling circumstance shows the character of the man. He was the very embodiment of reverence for the law itself, its rights and duties. When the legislature in 1843 reduced his judicial salary, he would refuse to complain; but he would not, and did not, draw the reduced salary. He waited for the unjust and unconstitutional law to be repealed later, and this was done in the next year. We, college boys, used to smile at his never failing in his speeches at Commencement dinner to refer to the absolute necessity of an "independent judiciary." But time has shown his insistence to be right and wise.

The Chief Justice's appearance on the bench was almost stern in its simplicity and dignity. The court itself seemed immortal and changeless in the many years during which Shaw, Dewey, Wilde, and Metcalf sat together. The custom of having murder trials always before a full bench, in order then and there to dispose of all legal questions arising in it, lasted until after the Civil War. Doctor Webster's trial in 1850 continued through eleven days before a full bench. The writer, then a Latin-school boy, followed it closely in his school intermissions. Attorney-General Clifford, in his blue coat, brass buttons and buff waistcoat; Dr. Webster, always wearing his black gloves, sitting in the cage; the Chief Justice and his three associates, in watchful, solemn dignity on the bench; the attentive jurors; the crowded room packed within the rail by the bar; and every other seat filled; — made a scene never to be forgotten. It was altogether suited to the temple of justice. The numerous stories about the Chief Justice's peculiarities of manner may serve for the entertainment of later generations, but to the men who tried cases before him they were mere empty talk. Shaw was the impersonation of absolute fairness. No counsel ever feared he would not have his case fairly heard, or that he would fail to get full appreciation of his points or full justice in its trial. The writer, who began practice less than two years after Chief Justice Shaw had retired, is thoroughly familiar with the views and thoughts of the men who then were leaders of the bar. He is able to speak with assurance. Their great regard and respect for the Chief Justice and their view of the way in which he performed his duties could hardly be increased. The writer never heard a single word from any of them which did not express profound reverence for the great Chief Justice. He was truly a great judge, and he is fortunate now in having so good a biographer at last, after long years of silence.

E. H. A. (1855).

THE ARMY AND THE LAW. By Garrard Glenn. New York: Columbia University Press. 1918. pp. 197.

It is a little surprising that the war has not produced a greater number of books relating to the law governing the army either in its internal government or in its external relations. The ante-bellum literature is composed chiefly of books on military law, like those by General Davis, General Dudley, and Colonel Winthrop, which, with the notable exception of Colonel Winthrop's excellent treatise, are largely compilations of statutes and opinions of the Judge Advocates General; the official Manual for Courts Martial; the official Rules of Land Warfare; Major Birkhimer's well-known work on Military Government and Martial Law; and the numerous books on international law. With the exception of the books on international law this literature is largely the product of army officers. Professor Glenn's little book, written from the point